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13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA

15 ART TOBIAS,

16 Plaintiff,

17 v.

18 CITY OF LOS ANGELES; SGT.  
19 SANCHEZ, #25339; DETECTIVE  
20 MICHAEL ARTEAGA, #32722;  
21 DETECTIVE JEFF CORTINA,  
22 #35632; DETECTIVE J. MOTTO,  
23 #25429; DETECTIVE JULIAN  
24 PERE, #27434; OFFICER  
25 MARSHALL COOLEY, #38940;  
26 OFFICER BORN, #38351; L.A.  
27 SCHOOL POLICE OFFICER  
28 DANIEL EAST, #959; and  
UNIDENTIFIED EMPLOYEES of  
the CITY OF LOS ANGELES,

Defendants.

CASE NO. 2:17-cv-1076-DSF-AS  
Assigned to Hon. Dale S. Fisher  
Assigned Magistrate Hon.

**Defendant L.A. School Police Officer  
Daniel East's Notice of Motion and  
Motion for Summary Judgment Or,  
Alternatively, for Summary  
Adjudication**

**[FRCP 56]**

Date: August 6, 2018  
Time: 1:30 p.m.  
Courtroom: First Street Courthouse, 350  
West 1st Street, Courtroom  
7D, Los Angeles, California

[Separate Statement of Uncontroverted  
Facts and Conclusions of Law;  
Declarations and Exhibits; [Proposed]  
Order; [Proposed] Judgment filed  
concurrently herewith]

PLEASE TAKE NOTICE that on August 6, 2018, at 1:30 p.m., or as soon  
thereafter as the matter may be heard in Courtroom 7D of the above-entitled court  
located at 350 West 1st Street, Los Angeles, California, Defendant L.A. School  
Police Officer Daniel East ("East") will move this Court, pursuant to Rule 56 of the

1 Federal Rules of Civil Procedure, for an Order as follows:

2 1. For summary judgment on Plaintiff's Complaint in favor of this  
3 Defendant, and against Plaintiff, on the grounds that the Complaint has no merit and  
4 that there is no triable issue of material fact as to this Defendant.

5 2. Alternatively, if for any reason summary judgment cannot be issued, then  
6 for an order adjudicating the following issues in this action as established without  
7 substantial controversy as against Plaintiff, that no further proof thereof shall be  
8 required at the trial of this action, and that final judgment on this action shall, in  
9 addition to any matters determined at trial, be based upon the issues as so established:

10 **Issue One:** Plaintiff's first cause of action for violation of his Fifth and  
11 Fourteenth Amendment rights against self-incrimination and his  
12 right to counsel pursuant to 42 USC section 1983 must fail  
13 because East never entered into any conspiracy and because he  
14 was not involved in Plaintiff's interrogation, wherein such rights  
15 were allegedly violated.

16 **Issue Two:** Plaintiff's second cause of action for violation of Plaintiff's due  
17 process rights pursuant to 42 USC section 1983 must fail because  
18 East never entered into any conspiracy and because there is no  
19 evidence that he violated Plaintiff's right to due process.

20 **Issue Three:** Plaintiff's third cause of action for violation of his Fifth and  
21 Fourteenth Amendment rights to due process and a fair trial  
22 pursuant to 42 USC section 1983 must fail because East never  
23 entered into any conspiracy and because he was not involved in  
24 Plaintiff's interrogation or prosecution, wherein such rights were  
25 allegedly violated.

26 **Issue Four:** Plaintiff's fourth cause of action for malicious prosecution  
27 pursuant to 42 USC section 1983 lacks merit because East never  
28 entered into any conspiracy, East did not direct or initiate the

1 criminal prosecution against the Plaintiff, and there was probable  
2 cause to arrest Plaintiff.

3 **Issue Five:** Plaintiff's fifth cause of action for failure to intervene pursuant to  
4 42 USC section 1983 must fail because East never was aware of  
5 any conspiracy and because he was not involved in Plaintiff's  
6 interrogation or prosecution, wherein such rights were allegedly  
7 violated.

8 **Issue Six:** By Plaintiff's own admission, Plaintiff's sixth cause of action for  
9 *Brady* violations does not apply to East.

10 **Issue Seven:** Plaintiff's seventh cause of action must fail because *Monell* claims  
11 do not apply to individuals.

12 This motion will be based upon this Notice, the attached Memorandum of  
13 Points and Authorities, the Proposed Judgment, the Separate Statement of Undisputed  
14 Material Facts, and exhibits thereto, the Declarations of Paul DiPietro, Daniel East,  
15 Rosa Trujillo, Detective Jeffery Cortina, and Roger Negroe in support thereof, the  
16 complete records and files of this action, and on such further evidence as may be  
17 presented prior to or at the hearing of this motion.

18 This motion is made following the conference of counsel required under L.R.  
19 7-3, which took place on May 11, 2018.

20  
21 DATE: June 29, 2018

GUTIERREZ, PRECIADO & HOUSE, LLP

22  
23 By: /S/ Arthur C. Preciado  
24 Arthur C. Preciado  
25 Paul M. DiPietro  
26 Attorneys for Defendant School Police  
27 Officer Daniel East  
28

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14	under color of state law, (2) East did not deprive Plaintiff of his	
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## MEMORANDUM OF POINTS AND AUTHORITIES

### Prefatory Statement

On August 8, 2012, the Los Angeles Police Department (“LAPD”) began an investigation into the murder of Alex Castaneda (“Castaneda Murder”). Defendant L.A. School Police Officer Daniel East (“East”) is not part of the LAPD. East’s purported liability in this matter arises out of an alleged conspiracy between East and the other defendants (members of the LAPD) to falsely identify Plaintiff as the suspect in a surveillance video of the Castaneda Murder.

There is no evidence of a conspiracy. Plaintiff would have the court believe that East and the co-defendants entered into an agreement to falsely identify Plaintiff *after* East had already independently identified Plaintiff! Plaintiff admits there is no evidence that East and the other defendants ever communicated prior to August 20, 2012, when two detectives approached East to ask if he could provide an identification of the suspect in the video. During the interview, East identified Plaintiff. The entirety of the interview (including minutes before the detectives even spoke with East) was audio recorded. Nowhere in the recording is there a communication regarding falsely identifying Plaintiff. Plaintiff even admits he has no personal knowledge of any conspiracy or agreement between East and the other defendants. Nor can Plaintiff present any evidence of a conspiracy.

That same day, August 20, 2012, Plaintiff was arrested and confessed to the murder. East neither arrested Plaintiff nor was East involved in the interrogation of Plaintiff.

There is also no evidence of a conspiracy after August 20, 2012. East’s subsequent involvement in Plaintiff’s arrest and prosecution was limited to: (1) a few communications (starting on August 24, 2012—two days after Plaintiff’s confession) with a single detective to provide a written statement, (2) providing the written statement, and (3) testifying at trial. East’s written statement could not have been the source of Plaintiff’s injuries as it was produced *15 days after* Plaintiff’s confession.

1 Further, the content in the statement mirrors East's statements on August 20, 2012,  
2 and a previous truancy stop of Plaintiff—the account of which Plaintiff admits is  
3 factually correct. Further, East is immune for the purposes of his testimony at  
4 Plaintiff's criminal trial.

5 Finally, East's actions in no way harmed Plaintiff: Plaintiff admits he was  
6 convicted solely because of his confession—a confession East had no involvement in  
7 procuring.

### 8 **Undisputed Material Facts**

#### 9 **Officer East**

10 East is an officer of the Los Angeles Unified School District ("LAUSD"); he  
11 has no relation or affiliation to the LAPD or the officers and detectives that work for  
12 the LAPD. [East's Statement of Uncontroverted Material Facts and Conclusions of  
13 Law ("SUF") No. 2, filed concurrently herewith.]

#### 14 **The Castaneda Murder And Investigation**

15 On August 18, 2012, Alex Castaneda was shot and killed in Los Angeles;  
16 surveillance cameras captured the shooting. That day, at least two LAPD officers at  
17 the scene of the crime identified Plaintiff as the suspect in the surveillance video.  
18 [SUF, No. 3.]

19 The LAPD immediately opened an investigation into the Castaneda Murder.  
20 [SUF, No. 3.] As part of the LAPD investigation, on August 20, 2012, LAPD  
21 Detectives John Motto ("Motto") and Michael Arteaga ("Arteaga"), visited Plaintiff's  
22 school, Berendo Middle School, where they spoke with Principal Rosa Trujillo  
23 ("Trujillo"). [SUF, No. 4.] They advised her that they were looking for someone to  
24 help make a possible identification of the suspect in the surveillance footage and  
25 asked if she would be willing to look at the video. [SUF, No. 5.] Of her own accord,  
26 she recommended they speak to East and Assistant Dean Roger Negroe ("Negroe")  
27 because they had more interactions with the students that tended to have disciplinary  
28 issues. [SUF, No. 6.]



1 The detectives never discussed any agreement with Trujillo, nor did they  
2 prompt her to recommend East and Negroe. [SUF, No. 7.] Trujillo radioed East and  
3 Negroe to have them report to East's office to speak with the detectives. This was the  
4 first time East ever had any conversation with anyone regarding the Castaneda  
5 Murder; he was unaware Motto and Arteaga were coming to the school to obtain an  
6 identification. [SUF, No. 8.]

7 The detectives showed East the surveillance video and asked him if he  
8 recognized the individual; they never mentioned Plaintiff was a suspect to East or to  
9 anyone at the school. East asked to view the video several times. [SUF, No. 9.] In the  
10 course of the interview, he made several statements to the effect of: (1) "I have a hard  
11 time ID'ing that person;" (2) "The guy I was thinking of—is a lot smaller in stature  
12 though—is Art Tobias;" and (3) "But I mean—god—he's so much smaller in real life."  
13 [SUF, No. 10.] East told the detectives that Plaintiff had arrived at school that day  
14 with a new, shorter haircut. [SUF, No. 11.]

15 East also told the detectives that he had previously stopped and cited Plaintiff  
16 for truancy on May 31, 2012. [SUF, No. 12.] During that stop, Plaintiff and East had  
17 a discussion about gangs in which Plaintiff spoke about "tagging" and possibly  
18 joining a gang. East also searched Plaintiff's backpack at the time and found writings  
19 and drawings that appeared to depict graffiti. [SUF, No. 13.]

20 East then left the room when Negroe was interviewed. [SUF, No. 14.] East did  
21 not speak to Negroe about the video or why the detectives were seeking to interview  
22 him; nor did he otherwise attempt to influence Negroe's statements. [SUF, No. 15.]  
23 The detectives' interviews with East and Negroe were audio recorded without break,  
24 starting from the detectives' conversation with Principal Trujillo until after  
25 interviewing Negroe. The audio recording is void of any conversation regarding an  
26 agreement to falsely identify Plaintiff. [SUF, No. 16.]

27 East was not in the room while Negroe reviewed the surveillance video, but  
28 waited outside the office. [SUF, No. 17.] East did not tell Negroe that he had

1 identified Art Tobias as the man in the video. [SUF, No. 18.] Negroe initially stated  
2 to the detectives that he could not identify the suspect in the video. [SUF, No. 19.]

3 **Plaintiff's Arrest and Confession**

4 After reviewing the video, Negroe left the office and began walking down the  
5 hall away from the detectives and East. [SUF, No. 20.] After Negroe left, East and the  
6 detectives had a short conversation about East possibly preparing a statement and the  
7 detectives continuing their investigation. [SUF, No. 21.]

8 While walking, Negroe saw a student standing in front of the school that  
9 resembled the suspect in the video. He returned and pointed the student out to the  
10 detectives. That student was Plaintiff, who was with another student. [SUF, No. 20.]  
11 The detectives arrested Plaintiff; East detained the other student and drove him to the  
12 LAPD station, separate from Plaintiff and the detectives. [SUF, No. 22.] East left the  
13 LAPD station and did not participate in Plaintiff's interrogation. [SUF, No. 23.]

14 That same day, August 20, 2012, during his interrogation, Plaintiff confessed  
15 to the murder after his will was allegedly overborne by the interrogating officers.  
16 [SUF, No. 24.] Plaintiff was thirteen years old when he was arrested, barely five feet  
17 tall, and weighed about 115 lbs. [SUF, No. 25.]

18 On August 20, 2012, in his Probable Cause Determination, Detective Jeffery  
19 Cortina ("Cortina") relied on the identification by the two LAPD officers and East, as  
20 well as Plaintiff's confession. [SUF, No. 26.] On August 23, 2012, in his decree for  
21 necessitating Plaintiff's detention, Arteaga never mentions East's identification, but  
22 instead relies upon the other LAPD officers' identification and Plaintiff's confession.  
23 [SUF, No. 27.] Arteaga and Motto's notes and reports of the August 20, 2012  
24 interviews of East and Negroe coincide with East and Negroe's statements. [SUF, No.  
25 28.]

26 **East's Written Statement and Trial Testimony**

27 After August 20, 2012, East did not speak with any other defendant aside from  
28 Cortina. [SUF, No. 29.] Cortina emailed East on August 24, 2012. Cortina also called

1 East on August 29, 2014 and later left East a voice message on September 4, 2012.  
2 Each communication concerned obtaining a written statement from East and Negroe.  
3 Those were the last and only conversations East had with Cortina. [SUF, No. 30.]

4 East prepared his statement himself, without any assistance or input from  
5 others. [SUF, No. 31.] East delivered Negroe's and his statements to Cortina on  
6 September 4, 2012. He dropped the statements off at the LAPD Rampart station with  
7 words to the effect, "Here's my report." He then left after documenting that he had  
8 dropped off the reports. [SUF, No. 32.]

9 East's written statement recounted Plaintiff's truancy stop and East's interview  
10 with the detectives. In the report, East states that he "was fairly sure that the Suspect  
11 in the video [was Plaintiff]" and that the "video made the person look slightly taller  
12 and thicker." East used the words "fairly sure" because he was not very confident due  
13 to the quality and clarity of the video. [SUF, No. 33.] East also mentions that the man  
14 in the video had a "distinct walk and stature which is similar to that of Art Tobias."  
15 East had not mentioned Plaintiff's gait during his interview, but had recalled it later  
16 after mulling over what he had seen on the video. He included it without  
17 encouragement from anyone else. [SUF, No. 34.] East's statement was never intended  
18 to be used as part of a conspiracy to deprive Plaintiff of his constitutional rights.  
19 [SUF, No. 35.]

20 Negroe's statement also recounted his identification of Plaintiff. [SUF, No. 36.]  
21 At no point did East ever attempt to induce Negroe to provide false information to  
22 anyone, including the LAPD. Nor did East ever attempt to influence any statement or  
23 testimony Negroe might give to the LAPD or the prosecution regarding Plaintiff's  
24 case. [SUF, No. 37.]

25 Some time after, the district attorney subpoenaed East to testify at Plaintiff's  
26 trial. In preparation for his trial testimony, East only discussed his written statement,  
27 his identification, and the truancy stop with the district attorney. [SUF, No. 38.] East  
28 was unaware that there was a possible match of the murder weapon to someone other

1 than Plaintiff. [SUF, No. 39.] At trial, East only testified as to Plaintiff's truancy  
2 stop, not his identification of Plaintiff. [SUF, No. 40.] Negroe also testified at trial  
3 that Plaintiff attended Negroe's school and was occasionally disruptive in class.  
4 [SUF, No. 41.]

5 At no point did East enter into any agreement with the other defendants. He did  
6 not ever intend to act in any way that would deprive Plaintiff of his constitutional  
7 rights. Nor was he aware of any conspiracy to do so. [SUF, No. 42.]

### 8 **Plaintiff's Conviction and Appeal**

9 Plaintiff was convicted for the Castaneda Murder. [SUF, No. 43.] But for his  
10 confession, Plaintiff would not have been convicted. [SUF, No. 44.] His conviction  
11 was overturned on appeal. [SUF, No. 45.] The district attorney then dismissed the  
12 charges against Plaintiff. [SUF, No. 46.] Plaintiff filed this suit, claiming East  
13 engaged in a conspiracy with the other Defendants to falsely identify Plaintiff as the  
14 suspect in the surveillance video of the Castaneda Murder. [SUF, No. 47.] Plaintiff  
15 has conducted extensive discovery in this matter, including propounding several sets  
16 of discovery requests, serving several subpoenas, and taking multiple depositions of  
17 the defendants and other persons. Over nine thousand pages of documents have been  
18 produced by the parties or otherwise subpoenaed. [SUF, No. 48.]

### 19 **Plaintiff's Deposition**

20 At his deposition, Plaintiff admitted that he has no personal knowledge of any  
21 conspiracy between East and the other defendants. [SUF, No. 42.]

## 22 **Argument**

### 23 **1. Summary judgment standard.**

24 A court must grant summary judgment if there is no genuine issue of material  
25 fact and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.Proc.  
26 56(c). A defendant need not affirmatively disprove the plaintiff's case: "The burden  
27 on the moving party may be discharged by 'showing' — that is, pointing out to the  
28 district court — that there is an absence of evidence to support the non-moving

1 party's case." *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). This can be  
2 established through consideration of the "pleadings, depositions, answers to  
3 interrogatories, and admissions on file..." Fed.R.Civ.P. 56(c).

4 Once the moving party meets its burden, a party opposing a properly made and  
5 supported motion for summary judgment may not rest upon mere denials but must set  
6 out specific facts showing a genuine issue for trial. Fed.R.Civ.P. 56(c) and (e); *see*  
7 *also Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989) ("A summary judgment  
8 motion cannot be defeated by relying solely on conclusory allegations unsupported by  
9 factual data.") In particular, when the non-moving party bears the burden of proving  
10 an element essential to its case, that party must make a showing sufficient to establish  
11 a genuine issue of material fact with respect to the existence of that element or be  
12 subject to summary judgment. *Celotex Corp.*, *supra*, 477 U.S. at 322.

13 "An issue of fact is not enough to defeat summary judgment; there must be a  
14 genuine issue of material fact, a dispute capable of affecting the outcome of the case."  
15 *American International Group, Inc. v. American International Bank*, 926 F.2d 829,  
16 833 (9th Cir. 1991) (Kozinski, dissenting). An issue is genuine if evidence is  
17 produced that would allow a rational trier of fact to reach a verdict in favor of the  
18 non-moving party. *Anderson v. Liberty Lobby*, 477 U.S. 242, 248. "This requires  
19 evidence, not speculation." *Meade v. Cedarapids, Inc.*, 164 F.3d 1218, 1225 (9th Cir.  
20 1999); *see also Knight v. U.S. Fire Ins. Co.*, 804 F.2d 9, 12 (2d Cir. 1986) ("Nor may  
21 a party rely on mere speculation or conjecture as to the true nature of the facts to  
22 overcome a motion for summary judgment.") The Court must assume the truth of  
23 direct evidence set forth by the opposing party. *Hanon v. Dataproducts Corp.*, 976  
24 F.2d 497, 507 (9th Cir. 1992).

25 However, where circumstantial evidence is presented, the Court may consider  
26 the plausibility and reasonableness of inferences arising therefrom. *Anderson, supra*,  
27 477 U.S. at 249-250; *TW Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n*, 809 F.2d  
28 626, 631-32 (9th Cir. 1987). Although the party opposing summary judgment is

entitled to the benefit of all *reasonable* inferences, “inferences cannot be drawn from thin air; they must be based on evidence which, if believed, would be sufficient to support a judgment for the nonmoving party.” *American International Group, supra*, 926 F.2d at 836-37. In that regard, “a mere ‘scintilla’ of evidence will not be sufficient to defeat a properly supported motion for summary judgment; rather, the nonmoving party must introduce some ‘significant probative evidence tending to support the complaint.’” *Summers v. Teichert & Son, Inc.*, 127 F.3d 1150, 1152 (9th Cir. 1997).

Plaintiff’s Second Amended Complaint (“SAC”)[Dkt. No. 67] states seven (7) causes of action: (i) Violation of Fifth and Fourteenth Amendments (Self-Incrimination, Right to Counsel); (ii) Violation of Fourteenth Amendment (Due Process); (iii) Violation of Fifth and Fourteenth Amendments (Due Process, Fair Trial); (iv) Malicious Prosecution; (v) Failure to Intervene; (vi) Conspiracy to Deprive of Constitutional Rights; and (vii) *Monell* Policy Claims. Each cause of action fails either as completely inapplicable to East or because there is no evidence of any conspiracy between East and the other defendants.

**2. Plaintiff’s Counts I-IV must fail because there is no evidence that East entered into a conspiracy to deprive Plaintiff of his Constitutional rights.**

In a nutshell, Plaintiff alleges in Causes of Action I-IV that on August 20, 2012, East entered into a conspiracy with the other defendants to provide a false identification of Plaintiff as the suspect in the video and to thereafter write a false report and testify against Plaintiff in support of that conspiracy. [SAC, ¶¶ 50-56; 119-125]. “[T]o establish a prima facie case of civil conspiracy, the plaintiff is required to show an express or implied agreement among the defendants to deprive the plaintiff of his constitutional rights, and actual deprivations of those rights in the form of *overt acts in furtherance* of the agreement.” *Gilkey v. Sheahan* 1995 U.S. Dist. LEXIS 16211, \*16 (N.D. Ill. 1995) (emphasis added) (quoting *Scherer v. Balkema*, 840 F.2d 437, 441-442 (7th Cir. 1988), *cert. denied*, 486 U.S. 1043, 100 L. Ed. 2d 620, 108 S.



1 Ct. 2035 (1988)).

2 **A. There is no evidence of a conspiracy.**

3 East works for the LAUSD, not the LAPD; he has no affiliation with the LAPD  
4 or its officers and detectives. [SUF, No. 2.] East never was aware of any conspiracy,  
5 nor did he enter into any conspiracy with the other defendants. [SUF, No. 42.]

6 There is no evidence that East ever spoke to the other defendants prior to  
7 meeting the detectives on August 20, 2012. Trujillo chose East to speak to Motto and  
8 Arteaga. [SUF, No. 6.] East's entire conversation with the detectives leading up to his  
9 identification of Plaintiff as the suspect in the surveillance video is audio recorded.  
10 [SUF, Nos. 8, 16.] The audio recording is void of any communications regarding an  
11 agreement to falsely identify Plaintiff. [SUF, No. 16.] The other defendants had no  
12 need to involve East in their conspiracy to falsely identify Plaintiff when East already  
13 had identified Plaintiff of his own accord. What remains is Plaintiff's absurd, if not  
14 inventive narrative: having already obtained the identification they wanted, the  
15 detectives then conspired with East retroactively.

16 Thereafter, East had no communications with any other defendant save Cortina.  
17 [SUF, No. 29.]. East received an email and two phone calls from Cortina in which  
18 Cortina asked East for a written statement. [SUF, No. 30.] East provided a written  
19 statement describing Plaintiff's truancy stop and his identification of Plaintiff on  
20 August 20, 2012. [SUF, Nos. 31-33.] East had no further communications with the  
21 other Defendants regarding Plaintiff. [SUF, Nos. 29-30.] East did not draft his  
22 statement as part of a conspiracy. [SUF, No. 35.]

23 Evidence of the conspiracy is nonexistent, because the conspiracy never  
24 occurred. Plaintiff admits he is unaware of any conspiracy. [SUF No. 42.] Plaintiff  
25 merely grasps at straws while ignoring the actual evidence and *audio recording* of  
26 East's conversation with the detectives.

27 ///

28 ///

**B. There is no evidence supporting an overt act in *furtherance* of a conspiracy.**

To survive summary judgment, Plaintiff must demonstrate an *overt act in furtherance* of a conspiracy. “Mere conversations between co-conspirators, *or merely narrative declarations* among them, are not made ‘in furtherance’ of a conspiracy. To be ‘in furtherance,’ the statements must further the common objectives of the conspiracy....When inquiring whether a statement was made ‘in furtherance of’ a conspiracy, we do not focus on its actual effect in advancing the goals of the conspiracy, but on the *declarant's intent* in making the statement.” *United States v. Nazemian*, 948 F.2d 522, 529 (9th Cir. 1991), citations omitted, emphasis added.

East’s actions cannot be said to have been made in furtherance of a conspiracy. East never intended for any of his actions to be part of a conspiracy. In fact, he was never aware of any conspiracy against Plaintiff. [SUF, Nos. 35, 42.]

East’s identification of Plaintiff, on August 20, 2012, was hesitant and could not have aided the conspiracy. In his interview with Motto and Arteaga, East had to review the video several times and stated he had a “hard time ID’ing that person.” Even then, he stated that although he thought the suspect in the video looked like Plaintiff, Plaintiff was smaller than depicted. [SUF, Nos. 9-10.] If East had intended for his identification to further the conspiracy, then he would have given an unequivocal identification, not one that was tentative and laden with doubt. Moreover, Plaintiff admits East’s statements regarding the suspect’s size in the video were true and accurate. [SUF, Nos. 10, 25, 50.]

East did not make any attempt to influence Negroe’s identification of the suspect in the video. [SUF, No. 15] Negroe, independently, identified Plaintiff as the suspect after seeing Plaintiff outside the school. [SUF, No. 20.]

Nor can East’s written statement constitute the requisite overt act. Such narrative declarations are not in furtherance of a conspiracy. *United States v. Nazemian, supra*, 948 F.2d at 529. East’s written statement discusses two things: (1)



1 Plaintiff's truancy stop; and (2) East's identification of Plaintiff on August 20, 2012.  
2 As to the truancy stop, Plaintiff admits that he discussed gang membership and  
3 "tagging" with East and that East found drawings in Plaintiff's backpack. [SUF, No.  
4 13.] As to the August 20, 2012 identification, the report matches the audio recording  
5 and Plaintiff's admissions. [SUF, Nos. 10, 33.] There is no falsity or evidence of an  
6 act in furtherance of a conspiracy. East merely recorded his recollection of events for  
7 a criminal investigation.

8 Finally, East's trial testimony was not an act in furtherance of a conspiracy. In  
9 response to a duly served subpoena, East testified as to the events of Plaintiff's  
10 truancy stop, not his August 20, 2012 identification. [SUF, Nos. 38, 40.]. This is not  
11 surprising, given the tentativeness of the identification. East's statements were  
12 truthful and concur with Plaintiff's admissions of the events. [SUF, Nos. 12-13, 40.]  
13 Further, even if East's testimony was false, he is immune from liability for it. *See*  
14 *Holt v. Castaneda*, 832 F.2d 123, 124 (9th Cir. 1987); *see also Franklin v. Terr*, 201  
15 F.3d 1098, 1099 (9th Cir. 2000) (witness immune from conspiracy to give false  
16 testimony).

17 Plaintiff's "proof" of a conspiracy rests solely on the fact that East is a peace  
18 officer, although not a member of the LAPD. Negroe committed the same acts as  
19 East, i.e. identifying Plaintiff, providing a written statement, and testifying at trial. In  
20 fact, Negroe actually directed the detectives to the front of the school where they  
21 arrested Plaintiff. [SUF, Nos. 20, 22, 36, 41.] Yet, Negroe is conspicuously not an  
22 alleged member of the conspiracy. What act did East perform that Mr. Negroe did  
23 not? He wore a uniform. Understandably, Plaintiff has soured to law enforcement, but  
24 his skepticism for peace officers is not actual evidence that East conspired against  
25 him. As Plaintiff even admits, he is unaware of any such conspiracy. [SUF, No. 42.]

26 Under Plaintiff's theory, any witness who identifies a suspect, provides a  
27 written statement, and then testifies at trial would be part of a conspiracy to deprive  
28 an individual of their constitutional rights. This stance is contrary to public policy as

1 it would deter any witness from ever aiding a criminal investigation. *See Briscoe v.*  
2 *Lahue* 460 U.S. 325, 332-333 (1983) (“[T]he claims of the individual must yield to  
3 the dictates of public policy, which requires that the paths which lead to the  
4 ascertainment of truth should be left as free and unobstructed as possible.”)

5 **C. Plaintiff’s proffered evidence to support a conspiracy are without**  
6 **merit.**

7 In his responses to East’s interrogatories, Plaintiff lists a set of documents that  
8 he alleges prove a conspiracy: (1) the chronology in the LAPD “murderbook” (LAPD  
9 2159-214), (2) the initial arrest report (PLA 179, 199-206),<sup>1</sup> (3) the supplemental  
10 arrest report (LAPD 2275-2280), (4) East’s statement/report (LAPD 2636), (5) the  
11 audio recording of East’s identification, (6) East’s deposition, and (7) East’s trial  
12 testimony. [SUF, No. 49.] None of these documents prove a conspiracy; they merely  
13 chronicle East’s limited involvement in the LAPD’s investigation. Plaintiff further  
14 states that East spoke to Arteaga and Motto for “an extended period of time” and  
15 agreed to join their conspiracy. Yet, none of the evidence supports that contention.

16 The chronology in the LAPD “murderbook” notes that no communications  
17 were made to East prior to August 20, 2012. [SUF No., 8.] It notes that East stated  
18 that the person in the video “looks like Art Tobias,” but that the “individual in the  
19 video looked a little thicker and taller.” This is consistent with the audio recording.  
20 [SUF No., 10.] The chronology then notes that on August 24, Detective Cortina  
21 emailed East requesting a written statement from him and Negroe. On August 29,  
22 Cortina called East to follow up on the written statements, which East agreed to  
23 provide. On September 4, Cortina left a voicemail with East to again request a written  
24 statement. That day, East arrived at the station and provided Cortina with Negroe and  
25 his statements. This was the last contact with East noted in the chronology. [SUF,

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26  
27 <sup>1</sup> PLA 199-206 is the same as LAPD 2214-2219 (Ex. H). See Declaration of Paul  
28 DiPietro, ¶ 9.

1 Nos. 29-32.] Nothing in this chronology evidences the existence of a conspiracy or an  
2 overt act in furtherance of a conspiracy; it merely demonstrates East cooperating with  
3 detectives performing a murder investigation.

4 As for the initial and supplemental arrest reports, Plaintiff claims a discrepancy  
5 evidences the conspiracy. Yet, the initial report states that Motto and Arteaga met  
6 with East and Negroe separately, which was audio recorded. East reviewed the video  
7 “several times” and “indicated the male in the video looked like Art Tobias” and  
8 “indicated the male in the video looked a little taller and thicker than Tobias.” This is  
9 consistent with the audio recording and East’s statements. [SUF, Nos. 9-10, 33.] The  
10 supplemental reports mirrors the same statements: “Both employees were interviewed  
11 separately,” the interview was audio recorded, and East reviewed the video several  
12 times and “indicated the male in the video looked like Art Tobias” and “indicated the  
13 male in the video looked a little taller and thicker than Tobias.” The only addition in  
14 the supplemental report was East’s account of when he stopped Plaintiff for truancy.  
15 Again, these statements are all consistent with each other and the audio recording;  
16 they do not demonstrate a conspiracy.

17 As for East’s written statement, it is consistent with the other accounts. East  
18 provides an account of Plaintiff’s truancy stop, which is consistent with Plaintiff’s  
19 admissions. [SUF, Nos. 13, 33.] East’s account of his August 20, 2012 identification  
20 is consistent with the audio recording and other accounts. [SUF, Nos. 10, 33.] The  
21 only discrepancy is that East included in his written statement that the suspect in the  
22 video had a similar walk to Plaintiff. East included this statement after mulling over  
23 what he had seen on the video and without encouragement from anyone else. [SUF,  
24 No. 34.]

25 As for the audio recording and East’s deposition transcript, the documents  
26 speak for themselves. In each, East qualifies his identification of Plaintiff as the man  
27 in the video, but states that the video made Plaintiff appear larger or that the person in  
28 the video appeared larger than Plaintiff. [SUF, Nos. 10, 33.] There is never a

1 discussion as to conspiracy. [SUF, Nos. 16, 42.]

2 As for East's trial testimony, he only testified as to Plaintiff's truancy stop.  
3 East's testimony is consistent with Plaintiff's version of events. [SUF, Nos. 13, 40.]  
4 Further, East cannot be liable for his trial testimony.

5 As to Plaintiff's contention that East spoke to Arteaga and Motto for "an  
6 extended period of time" and agreed to join their conspiracy, the evidence  
7 conclusively contradicts Plaintiff's speculation. East's identification of Plaintiff was  
8 audio recorded. The audio recording starts with Motto and Arteaga's initial  
9 conversations with Principal Trujillo and continues until after Negroe views the  
10 video. There is no conversation during the audio recording in which East agrees to  
11 identify Plaintiff. [SUF, No. 16.] There is no evidence of communications relating to  
12 Plaintiff between East and the other defendants prior to East identifying Plaintiff.  
13 [SUF, No. 8.] Since East had already identified Plaintiff as the suspect in the video,  
14 there was no need for the other defendants to invite East into their alleged  
15 conspiracy—East's part had already occurred.

16 Further, there is no "extended period of time" in which East could have spoken  
17 to the detectives. Shortly after Mr. Negroe left, he returned to notify the detectives  
18 that he identified a male, Plaintiff, outside of the school who resembled the suspect in  
19 the video. The detectives immediately followed Mr. Negroe to the front of the school  
20 where they arrested Plaintiff and transported him to jail. There was simply no time for  
21 an extended conversation between East, Arteaga, and Motto. [SUF, Nos. 20-21.] And  
22 Plaintiff can present no evidence of such a conversation aside from mere speculation.

23 Plaintiff will most likely point to the addition of his gait in East's written  
24 statement as evidence of a conspiracy. However, East added this statement only after  
25 mulling over what he had seen on the video. He included it of his own accord and  
26 without encouragement from anyone else. [SUF, No. 34.] Plaintiff cannot proffer  
27 evidence to the contrary, only speculation and conjecture. Further, any discrepancy in  
28 the written statement was harmless as to Plaintiff's injuries: by the time East provided

1 his written statement on September 4, Plaintiff had already confessed to the murder  
2 on August 20. And as Plaintiff admits, his confession was the sole reason he was  
3 convicted. [SUF, No. 44.]

4 Plaintiff will also argue that because Cortina listed East's identification in his  
5 Probable Cause Determination, East must have been part of a conspiracy. Plaintiff  
6 ignores the fact that East and Cortina had never even communicated by the time  
7 Cortina executed the Probable Cause Determination on August 20, 2012; East had  
8 only spoken to Arteaga and Motto. Plaintiff also ignores that East has no control over  
9 what evidence Cortina chooses to rely upon for his Probable Cause Determination.  
10 Most importantly, Plaintiff ignores that Cortina lists two other LAPD officers'  
11 identifications and *Plaintiff's confession* as further evidence of probable cause, either  
12 of which would have been enough in and of themselves.<sup>2</sup>

13 **3. Plaintiff's Counts I-IV also must fail because Plaintiff cannot prove the**  
14 **elements of 42 U.S.C. section 1983 because (1) East was not acting under**  
15 **color of state law, (2) East did not deprive Plaintiff of his Constitutional**  
16 **rights; and (3) Plaintiff's alleged injury was not proximately caused by**  
17 **East's conduct.**

18 To establish liability under 42 U.S.C. section 1983, Plaintiff must prove: (1)  
19 East was acting under color of state law; (2) East committed an act that deprived the  
20 Plaintiff of some right, privilege or immunity protected by the Constitution; and (3)  
21 Plaintiff's injury was proximately caused by East's conduct.

22 For the first element of 42 U.S.C. section 1983, East was not acting in his  
23

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24 <sup>2</sup> See *Jernigan v. Richard*, 907 F. Supp. 2d 998, 1041 (D. Ariz. 2012), reversed and  
25 remanded on other grounds in *Jernigan v. Elliott*, 576 Fed. Appx. 695, (D. Ariz. 2014)  
26 (Identification by two witnesses deemed probable cause.); *Phillips v. Allen*, 668 F.3d  
27 912, 915 (7th Cir. 2012) ("Identification by a single eyewitness who lacks an apparent  
28 grudge against the accused person supplies probable cause for arrest").

1 capacity as a peace officer. While East was on duty as a police officer on August 20,  
2 2012, he was interviewed by Detective Motto and Arteaga as a witness, a private  
3 citizen. They did not ask him to perform any task that required him to act under color  
4 of state law. The only time East arguably acted under color of state law was when he  
5 detained the other student who was with Plaintiff and drove such student to the police  
6 department. [SUF, Nos. 22-23.] Such conduct did not affect or injure Plaintiff, who  
7 was arrested by Detectives Motto and Arteaga.

8 If, *arguendo*, East was acting under color of law when he identified Plaintiff,  
9 provided a written statement, and testified at court, then he would be entitled to  
10 qualified immunity, which protects “all but the plainly incompetent or those who  
11 knowingly violate the law.” *Malley v. Briggs*, 475 U.S. 335, 341 (1986). It is  
12 undisputed that East never spoke to anyone regarding the Castaneda Murder prior to  
13 August 20, 2012. [SUF, No. 8.] And the audio recording undisputedly demonstrates  
14 that East was not asked to falsely identify Plaintiff, asked to enter into any  
15 conspiracy, or even told that Plaintiff was a suspect. [SUF, Nos. 9, 16, 42.] The only  
16 conclusion, then, is that East acted alone and from his own recollection to identify  
17 Plaintiff. Even then, East qualified his identification by stating that the person in the  
18 video appeared much larger, taller, and thicker than Plaintiff. [SUF, No. 10.] East’s  
19 subsequent written statement mirrors these facts. [SUF, No. 33.] East’s trial testimony  
20 was also true, as Plaintiff admits. [SUF, Nos. 13, 40.] Therefore, it cannot be said that  
21 East acted incompetently or knowingly violated the law. As such, he is entitled to  
22 qualified immunity.

23 As to the second element, East did not deprive Plaintiff of his Constitutional  
24 rights. East’s entire participation in Plaintiff’s investigation and conviction was (1)  
25 providing a qualified, hesitant identification, (2) providing a written report of his  
26 identification and previous interaction with Plaintiff, and (3) testifying in court as to  
27 his previous interaction with Plaintiff. None of these actions deprived Plaintiff of his  
28 Constitutional rights. In fact, Plaintiff admits that the sole reason he was convicted



1 was because of his own confession [SUF, No. 44], which East in no way helped  
2 procure. [SUF, No. 23.]

3 Assuming *arguendo* that East's actions did deprive Plaintiff of his  
4 Constitutional rights, East is not liable because the information he provided was true  
5 and because East is immune. East's identification was not fabricated, but a truthful  
6 opinion. East's report reflects that honest opinion. [SUF, Nos. 10, 12-13, 31, 33-35.]  
7 Further, East's testimony is granted absolute immunity because he was not a  
8 complaining witness. *See Briscoe v. Lahue, supra*, 460 U.S. at 335-336; *Malley v.*  
9 *Briggs*, 475 U.S. 335, 340-341 (1986); *see also Harris v. Roderick*, 126 F.3d 1189,  
10 1199 (9th Cir. 1997) (A complaining witness is defined as one who initiates the  
11 prosecution rather than being merely a witness.). East did not initiate the prosecution:  
12 the investigation and prosecution of Plaintiff began with the LAPD days before East  
13 was asked to provide an identification. Neither was East involved in investigating the  
14 Castaneda Murder; East solely acted as a witness. [SUF, No. 52.]

15 As to the third element, East's conduct never injured Plaintiff. Plaintiff's  
16 confession was the sole reason he was convicted. [SUF, No. 44.] East neither  
17 participated in Plaintiff's interrogation nor assisted in obtaining his confession. [SUF,  
18 No. 23.] East's identification and written statement were qualified and actually  
19 provided reasonable doubt to help Plaintiff's defense. Accordingly, at trial, East was  
20 only asked to testify as to his prior interaction with Plaintiff—a truancy stop—the  
21 substance of which Plaintiff admits is true. [SUF, Nos. 13, 40.]

22 **4. Individually, Plaintiff's Counts I-IV each fail for lack of evidentiary**  
23 **support.**

24 For Counts I-IV, Plaintiff reincorporates prior allegations and makes new  
25 allegations. For the incorporated prior allegations, the only allegations concerning  
26 East are that he entered into an agreement on August 20, 2012 to falsely identify  
27 Plaintiff as the suspect in the video. As argued above, this is an impossibility: it is  
28 undisputed that by the time East makes his identification, no agreement had been

1 made between him and the other defendants. Further, Plaintiff admits he has no  
2 knowledge of any agreement. [SUF, No, 42.]

3 As to the new allegations for each Count, they are addressed as follows:

4 **A. Count I lacks any evidentiary support.**

5 As to Count I, in paragraphs 167-170 of the SAC, Plaintiff alleges that:

6 “In the manner described more fully above, the Defendant Officers,  
7 individually, jointly, and in conspiracy with one another, as well as under color of  
8 law and within the scope of their employment, forced Plaintiff to incriminate  
9 himself falsely and against his will, in violation of his rights secured by the Fifth  
10 and Fourteenth Amendments.”

11 “As described more fully above, the Defendant Officers conducted an  
12 unconstitutional interrogation of Plaintiff, which caused Plaintiff to make  
13 involuntary statements implicating himself in the murder of Alex Castaneda, and  
14 attempted murder of two others.”

15 “In the manner described more fully above, the Defendant Officers  
16 refused to provide Plaintiff with his legal guardian and an attorney when he asked to  
17 see his legal guardian and when he invoked his right to an attorney while being  
18 interrogated. In doing so, the Defendants violated their clearly established duty to  
19 terminate an interrogation once an individual subject to a custodial interrogation  
20 invokes their right to counsel.”

21 “The false statements coerced by the Defendant Officers and made  
22 after Plaintiff asked to see his legal guardian and after Plaintiff invoked his right to  
23 counsel were used against Plaintiff to his detriment in a criminal case. These  
24 statements were the only reason that Plaintiff was prosecuted and convicted of the  
25 murder of Alex Castaneda and attempted murder of two others.”

26 East was not involved in Plaintiff’s interrogation and did not help force or  
27 coerce any false statements from Plaintiff. [SUF, No. 23.] As alleged, there is no  
28 evidence to support the claim that East violated Plaintiff’s Fifth and Fourteenth



1 Amendment rights.

2 **B. Count II lacks any evidentiary support.**

3 As to Count II, in paragraphs 174-176 of the SAC, Plaintiff alleges that:

4 “In the manner described more fully above, the Defendant Officers,  
5 individually, jointly, and in conspiracy with one another, as well as under color of law  
6 and within the scope of their employment, forced Plaintiff to incriminate himself  
7 falsely and against his will, in violation of his rights secured by the Fourteenth  
8 Amendment.”

9 “As described more fully above, the Defendant Officers unconstitutional  
10 interrogation of Plaintiff shocks the conscience and involved truly egregious and  
11 unreasonable actions by defendants, which caused Plaintiff to make involuntary  
12 statements implicating himself in the murder of Alex Castaneda and attempted  
13 murder of two others.”

14 “The false statements unconscionably obtained by the Defendant  
15 Officers were used against Plaintiff to his detriment in a criminal case. These  
16 statements were the only reason that Plaintiff was prosecuted and convicted of the  
17 murder of Alex Castaneda.”

18 Again, East was not involved in Plaintiff’s interrogation and did not help force  
19 or coerce any false statements from Plaintiff. [SUF, No. 23.] As alleged, there is no  
20 evidence to support the claim that East violated Plaintiff’s Fourteenth Amendment  
21 rights.

22 **C. Count III lacks any evidentiary support.**

23 As to Count III, in paragraphs 180-183 of the SAC, Plaintiff alleges that:

24 “As described more fully above, all of the Defendant Officers while acting  
25 individually, jointly, and/or in conspiracy, as well as under color of law and within  
26 the scope of their employment, deprived Plaintiff of his constitutional right to a fair  
27 trial.”

28 “In the manner described more fully above, the Defendant Officers and

1 individually, jointly, and/or in concert and in conspiracy, fabricated  
2 evidence—including but not limited to reports concerning Defendants’ false claims  
3 purporting to “identify” Plaintiff, the substance of Plaintiff’s oral confession, reports  
4 purporting to memorialize Plaintiff’s confession—and/or deliberately withheld  
5 exculpatory evidence. In doing so, the Defendants violated their clearly established  
6 duty to report all material exculpatory and impeachment information.”

7 “Absent Defendants’ misconduct, the prosecution of Plaintiff could not and  
8 would not have been further prosecuted, and Plaintiff would not have been  
9 convicted.”

10 “The Defendants’ misconduct directly and proximately resulted in the unjust  
11 and wrongful criminal conviction of Plaintiff and his continuing wrongful  
12 imprisonment, thereby denying him his constitutional right to a fair trial, in violation  
13 of the Sixth Amendment and the Due Process Clause of the Fourteenth Amendment  
14 to the United States Constitution.”

15 As East was not involved in Plaintiff’s interrogation or investigation and had  
16 no duty to disclose exculpatory evidence, the only allegation herein that applies to  
17 East is that he fabricated evidence, i.e. his statement regarding his identification of  
18 Plaintiff and Plaintiff’s truancy stop. However, there was no “fabrication.” East’s  
19 written statement truthfully recounts both the events of Plaintiff’s truancy stop (which  
20 Plaintiff admits is true) and East’s interview with the Detectives. [SUF, Nos. 9-13,  
21 33.] More importantly, Plaintiff had already confessed *fifteen days before* East  
22 provided his statement. At that juncture, a fabricated statement serves no purpose to  
23 the alleged conspiracy.

24 **D. Count IV lacks any evidentiary support.**

25 As to Count IV, in paragraphs 187-189 of the SAC, Plaintiff alleges that:

26 “The Defendant Officers accused Plaintiff of criminal activity knowing those  
27 accusations to be without genuine probable cause, and they made statements to  
28 prosecutors with the intent of exerting influence and to institute and continue the

1 judicial proceedings.”

2 “The Defendants caused Plaintiff to be improperly subjected to judicial  
3 proceedings for which there was no probable cause. These judicial proceedings were  
4 instituted and continued maliciously, resulting in injury.”

5 “Statements of the Defendants regarding Plaintiff’s alleged culpability were  
6 made with knowledge that said statements were false. The same is true of Defendants  
7 purported “identifications,” which contradicted the surveillance camera. The  
8 Defendants also fabricated evidence through their “identifications” and through their  
9 efforts to obtain a false statement from Plaintiff, including their report purporting to  
10 memorialize that confession. The Defendants were aware that, as described more  
11 fully above, no true or reliable evidence implicated Plaintiff in the shooting.”

12 It is undisputed that East did not arrest Plaintiff. It is also undisputed that East  
13 was not involved in Plaintiff’s interrogation, Plaintiff’s investigation, or providing  
14 evidence to the prosecutor. Nor did East direct or initiate the criminal prosecution  
15 against the Plaintiff. [SUF, Nos. 22-23, 52.] Thus, the only allegation that applies to  
16 East is that he made false statements identifying Plaintiff as the individual in the  
17 video. But East’s statements were not false. While East identified the man in the  
18 video as Plaintiff, he also noted that the man looked taller and larger than Plaintiff,  
19 which Plaintiff admits is true. [SUF, Nos. 10, 50.]

20 Further, East’s written statement, or at least those portions concerning the  
21 identification of Plaintiff, was not used as probable cause for Plaintiff’s arrest or  
22 prosecution. Plaintiff had already been arrested and had confessed (August 20) when  
23 East provided his written statement (Sept. 4). And at Plaintiff’s trial, East only  
24 testified as to Plaintiff’s prior truancy stop—not East’s identification of Plaintiff.  
25 [SUF, No. 40.]

26 ///

27 ///

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1 **5. Count IV also fails because there was probable cause to arrest and**  
2 **prosecute Plaintiff.**

3 In order to prevail on a claim of malicious prosecution under 42 U.S.C. § 1983,  
4 Plaintiff must show that East prosecuted him with malice and without probable cause,  
5 and did so for the purpose of denying Plaintiff a specific constitutional right. *See*  
6 *Awabdy v. City of Adelanto*, 368 F.3d 1062, 1066 (9th Cir. 2004), *citing Freeman v.*  
7 *City of Santa Ana*, 68 F.3d 1180, 1189 (9th Cir. 1995). Plaintiffs, who cannot show  
8 that probable cause was lacking, cannot sue for malicious prosecution. *See Hart v.*  
9 *Parks*, 450 F.3d 1059, 1071 (9th Cir. 2006). Probable cause arises when an officer  
10 has knowledge based on reasonably trustworthy information that the person arrested  
11 has committed a criminal offense." *Gausvik v. Perez*, 345 F.3d 813, 818 (9th Cir.  
12 2003), *citing Beck v. Ohio*, 379 U.S. 89, 91 (1964).

13 There was probable cause to arrest Plaintiff. The suspect in the Castaneda  
14 Murder was filmed by surveillance cameras. Four separate individuals identified  
15 Plaintiff as the shooter in the surveillance video. [SUF, Nos. 3, 10, 20.] Even  
16 assuming Plaintiff's contention that the officers at the scene falsely identified him,  
17 East and Mr. Negroe independently identified Plaintiff. [SUF, Nos. 4-20.] And Mr.  
18 Negroe was not part of any conspiracy to falsely identify Plaintiff. [*Ibid.*] These two,  
19 independent identifications, combined with the surveillance video itself, were  
20 reasonably trustworthy enough to arrest Plaintiff.<sup>3</sup>

21 **6. Count V lacks any evidentiary support.**

22 Plaintiff also claims that East failed to intervene and stop the other co-  
23 conspirators. SAC ¶¶ 193-194. East was not involved in Plaintiff's interrogation or  
24 prosecution, apart from testifying at trial (for which he is immune). [SUF, Nos. 23,  
25 40, 52.] Nor was he aware of any conspiracy among the other defendants to deprive  
26 Plaintiff of his constitutional rights. [SUF, No. 42.] Therefore, East could not have  
27

28 <sup>3</sup> See Footnote 2.

1 known he should have intervened, nor did he have the opportunity.

2 **7. Count VI does not apply to East.**

3 Plaintiff admits this cause of action does not apply to East. [See Docket # 62.]

4 **8. Count VII lacks any evidentiary support or legal foundation.**

5 A *Monell* claim applies to municipalities, not individuals. *See Monell v. Dept*  
6 *of Soc. Servs.*, 436 U.S. 658, 701 (1978). Also, Plaintiff has no evidence supporting  
7 his *Monell* claims against East. [SUF, No. 51.]

8 **Conclusion**

9 Defendant East respectfully requests that the Court grant his Motion.

10 DATE: June 26, 2018

GUTIERREZ, PRECIADO & HOUSE, LLP

11  
12 By: S/Arthur C. Preciado  
13 Arthur C. Preciado  
14 Attorneys for Defendant  
15 OFFICER DANIEL EAST  
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